

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON

Plaintiff,

V.

AARON LUMBRERAS AND
ELIZABETH LUMBRERAS

Defendants.

CASE NO. 4:20-cv-1717

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, Certain Underwriters at Lloyd's, London. ("Underwriters"), files its Complaint for Declaratory Relief against Defendants, Aaron and Elizabeth Lumbreras, as follows:

PARTIES

1. Underwriters is a foreign insurance corporation duly incorporated under the laws of the United Kingdom. Underwriters issued and delivered a policy of insurance in the State of Texas pursuant to the Texas Insurance Code.

2. Upon information and belief, Aaron Lumbreras and Elizabeth Lumbreras reside at 3801 North Glasscock Road, Mission, Texas 78572 and may be served with process at that address.

VENUE

3. Venue is proper in this Honorable Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to this suit occurred in this Judicial District and the property that is the subject of the action is situated in this Judicial District.

JURISDICTION

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 due to Diversity of

Citizenship of the parties. The matter in controversy exceeds \$75,000.00 exclusive of interest and costs.

BACKGROUND

5. Underwriters issued an insurance policy numbered AT300161107 to Defendants, which provided certain coverages during the policy period spanning July 21, 2017 to July 21, 2018 (the “Policy”).

6. Defendants are seeking coverage under the Policy in connection with an insurance claim reported to Underwriters on or about June 22, 2018 for damages allegedly sustained to 205 East 9th Street, Mission, Texas 78572 (the “Property”) on June 21, 2018.

7. Defendants allege that the Property’s roof and interior sustained storm damages which are covered under the Policy. They claim the property was “in the direct line of the severe wind, rain, and/or hail storm” and the resulting damages have caused them “significant problems.”¹

8. Based on these allegations, Defendants have demanded Underwriters provide certain coverages to them in connection with the claim, but Underwriters believes that it has no obligation to Defendants under the Policy in light of clear and unequivocal policy exclusions. As a result, Underwriters asserts that the Policy excludes coverage for Defendants’ claim. The Policy language relevant to the analysis of this matter is set out on Exhibit B, which is incorporated here as if set forth in full.

9. The Building and Personal Property Coverage Form section of the Policy provides that Underwriters will “pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of

¹ See correspondence dated June 26, 2019, attached and incorporated herein for all purposes as if copied verbatim as Exhibit A, p. 1.

Loss.”² The property described in the Policy Declarations is Defendants’ convenience store located at 205 East 9th Street, Mission, Texas 78572³—the same property for which they allege damages and seek coverage.⁴

10. The Policy has a Broad Form Cause of Loss as listed in the Policy Declarations.⁵ That form defines the Covered Causes of Loss (i.e. what type of losses are covered by the policy) to the following:

4. Windstorm or Hail, but not including

...

- c. Loss or damage to the interior of any building or structure, or the property inside the building or structure, caused by rain, snow, sand, or dust, whether driven by wind or not, unless the building or structure first sustains wind or hail damage to its roof or walls through which the rain, snow, sand or dust enters.

...

14. Water Damage

- a. Water Damage, meaning accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance, that is located on the described premises and contains water or steam.

However, Water Damage does not include:

(1) Discharge or leakage from:

- (a) An Automatic Sprinkler System;
- (b) A sump or related equipment and parts, including overflow due to sump pump failure or excessive volume of water; or
- (c) Roof drains, gutters, downspouts or similar fixtures or equipment;

² Exhibit B, p. 10.

³ *Id.*, at p. 5.

⁴ Exhibit A.

⁵ Exhibit B., at pp. 5 & 10.

(2) The cost to repair any defect that caused the loss or damage;

(2) Loss or damage caused by or resulting from continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more;

...

- b. If coverage applies subject to a. above, and the building or structure containing the system or appliance is Covered Property, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or steam escapes. But we will not pay the cost to repair any defect that caused the loss or damage.⁶

11. Under these provisions, the interior damages caused by rain water are not covered unless there is first a wind or hail-created opening in the exterior of the building.

12. Further, the Policy contains coverage for Collapse, but this coverage is limited to only “an abrupt collapse as described in C.1 through C.7.”⁷ The provisions in that section of the Policy applicable here are C.1, C.2.a, and C.2. e., which state as follows:

1. For the purpose of this Additional Coverage - Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.
2. We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if such collapse is caused by one or more of the following:
 - a. Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire-extinguishing equipment; sinkhole collapse; volcanic action; breakage of building glass; falling objects; weight of snow, ice or sleet; water damage, meaning accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including

⁶ *Id.*, at pp. 32-33.

⁷ *Id.*, at pp. 36-37.

its related equipment and parts), that is located on the described premises and contains water or steam; all only as insured against in this Coverage Part;

...

e. Weight of rain that collects on a roof⁸

13. Here, the Property's roof is intact and has not collapsed; instead, the only damages to the building are on the interior and can be seen in form of water damages to various ceilings, walls, and floors. There is no identifiable opening on the exterior of the building resulting from wind or hail that is allowing water into the building. Notably, Defendants claim that certain portions of those ceilings have "collapsed" due to over saturation. However, the Policy does not provide coverage for damages caused by collapse unless the collapse itself is caused by a specifically named cause, in this case, windstorm, hail, or the weight of rain collecting on the roof. None of these causes breached the exterior roofing surface or caused the roof to collapse; therefore, none of these causes have caused the interior ceilings to collapse.

14. Lastly, the policy excludes coverage for flood damages.⁹ Specifically, the Policy states as follows:

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

...

g. Water

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not.

15. Therefore, any flood damages present at the property are also excluded from

⁸ *Id.*

⁹ *Id.*, at p. 33-34

coverage.

16. Based upon these policy provisions, there is no coverage for Defendants' insurance claim. Attached as Exhibit C are photographs Defendants' public adjuster Oscar Salinas, Jr. provided of the alleged damages at the property. None of the photographs show any storm damage to the exterior of the building, nor do they show that any portion of the building has collapsed. Instead, they only show interior water stains and damaged ceiling tiles. Based upon the policy provisions above, there are no covered damages to this building that occurred on June 21, 2018.

PRAYER

17. Underwriters prays that Aaron Lumbreras and Elizabeth Lumbreras be cited to appear and answer and, upon final trial, Underwriters be granted judgment as follows:

- a. Declaring that Certain Underwriters at Lloyd's, London is not obligated in any way under the policy to provide the coverage requested by Defendants or make any payment for the damages sought by Defendants.
- b. Declaring that Certain Underwriters at Lloyd's, London be awarded such other and further relief, both general and special, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

/s/ Les Pickett

Les Pickett

"Attorney-in-Charge"

Federal I.D. No. 14306

State Bar No. 15980520

William D. Abbott

Federal I.D. No. 2789456

State Bar No. 24087069

OF COUNSEL:

GALLOWAY, JOHNSON, TOMPKINS, BURR & SMITH

1301 McKinney Suite 1400

Houston, Texas 77010

(713) 599-0700 – Telephone

(713) 599-0777 – Facsimile

ATTORNEYS FOR PLAINTIFF

CERTAIN UNDERWRITERS AT LLOYD’S, LONDON